



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

SEP 30 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article No.: 70141200000061281100

Vinay Patel
EST, Inc.
15785 S. Keeler Terrace
Olathe, Kansas 66062

Re: Invitation for Pre-filing Negotiations
In the Matter of EST, Inc.

Dear Mr. Patel:

The U.S. Environmental Protection Agency has identified pesticides as highly toxic substances that present significant environmental and health concerns. Exposure to certain pesticides may lead to injury or death. The sale and use of incorrectly labeled or formulated pesticides may pose a danger to human health or the environment. As a result of these potential dangers, the EPA regulates the registration, distribution, sale, and use of pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related regulations in the Code of Federal Regulations.

On May 16, 2017 and May 25, 2017, the EPA conducted an inspection at EST, Inc.'s facility located at 15785 S. Keller Terrace Olathe, Kansas 66062. A copy of the inspection report was forwarded to EST, Inc. on June 21, 2017. The inspection was conducted to determine the compliance status of EST, Inc. with the requirements of FIFRA. We have completed our review of the information collected in the inspection and have determined that a number of violations of FIFRA have occurred.

Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) further defines to "distribute or sell" to include "offer for sale." Based on sales and marketing documentation collected as a result of the inspection, EPA has determined that EST, Inc. sold and/or offered to sell the following unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A):

1. Microcide IV;
2. Nema Max 9000;
3. Insecto-Max;
4. Horticulture Weed Control HWC 2030;
5. Nano Weed Control;
6. Tobacco Pesticide Concentrate; and
7. Stump X.



Additionally, it is a violation of Section 12(a)(2)(L) of FIFRA to fail to submit annual pesticide production reports pursuant to 40 C.F.R. § 167.85(d). The inspection and review of EST, Inc.'s production reports revealed that EST, Inc. failed to submit pesticide production reports for 2014 and 2016. Please find the enclosed Notice of Warning for additional information and requirements addressing this violation.

Civil Penalty

The EPA believes that an enforcement action in the form of a civil penalty is appropriate for these violations. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 per violation. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, adjusted this amount so that penalties of up to \$7,500 per day are authorized for violations that occur from January 12, 2009, through November 2, 2015, and penalties of up to \$19,057 are authorized for violations that occur after November 2, 2015.

Based on the information the EPA now has before it, we believe a civil penalty of \$75,773 is appropriate. The penalty was calculated pursuant to the FIFRA Enforcement Response Policy. A link to this document is included in the Additional Sources of Information enclosure.

60-Day Pre-Filing Negotiations

While the EPA believes it is appropriate to proceed with a formal enforcement action, we also recognize that settlement of this matter may be better accomplished by conducting negotiations prior to the filing of a complaint. By this letter we are offering EST, Inc. the opportunity to negotiate a resolution of the proposed penalty before the complaint is filed. The settlement of this matter through payment of a civil penalty must be memorialized in a Consent Agreement and Final Order to be signed by an authorized representative of EST, Inc. and EPA within the 60-day period. As part of these pre-filing negotiations, EPA will consider any additional information that EST, Inc. has that is relevant to the penalty or violations. If EST, Inc. is interested in participating in pre-filing negotiations, please contact me **within 10 calendar days of EST, Inc.'s receipt of this letter at: mills.clarissa@epa.gov; or (913) 551-7743.** If EST, Inc. chooses not to participate in pre-filing negotiations, or does not contact me within the 10-day time period, or settlement is not reached within the 60-day pre-filing time period, the EPA intends to proceed with the filing of an administrative complaint.

Ability to Pay

If EST, Inc. believes that they do not have the financial ability to pay the EPA's proposed penalty and want the EPA to consider EST, Inc.'s financial condition, EST, Inc. will need to provide the EPA with appropriate financial documentation to substantiate EST, Inc.'s claim **within the first 30 days** of the 60-day pre-filing negotiations period. Such documentation will include three years of signed federal income tax returns and financial statements, and a completed EPA financial ability to pay form. EST, Inc. may contact me for a copy of the form. Please note that review of EST, Inc.'s financial documents does not toll the 60-day pre-filing negotiations period.

Supplemental Environmental Projects

EST, Inc. may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project (SEP). A SEP is a project purchased or performed by a violator that provides significant environmental benefits and has a nexus to the environmental harm threatened or caused by the violations. A full description of the EPA's policy concerning the use of Supplemental Environmental

Projects in settlement actions can be found at the link included in the Additional Sources of Information enclosure.

Innovative Compliance

The EPA also encourages consideration of innovative compliance tools in administrative settlements whenever appropriate. For additional information, see "Use of Next Generation Compliance Tools in Civil Enforcement Settlements," January 7, 2015 (link to this document is included in the Additional Sources of Information enclosure).

As indicated above, the EPA has determined that there are violations of FIFRA at the EST, Inc.'s facility that warrant the assessment of a civil penalty. However, the EPA is committed to working with EST, Inc. to resolve this matter and believes that pre-filing negotiations offer all parties an opportunity to reach settlement without protracted litigation. EST, Inc.'s immediate attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me at: mills.clarissa@epa.gov or (913) 551-7743.

Sincerely,

A handwritten signature in black ink, appearing to read "CH Mills".

Clarissa Howley Mills
Assistant Regional Counsel

Enc: Additional Sources of Information
SEC Notice
Notice of Warning

cc: Gary Meyer (e-copy)
Kansas Department of Agriculture

Judy Glass (e-copy)
Kansas Department of Agriculture

Additional Sources of Information

- Information on FIFRA and the implementing regulations:
<https://www.epa.gov/agriculture>
- Information on EPA's SEP policy:
<https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>
- Federal Insecticide, Fungicide, and Rodenticide Act Enforcement Response Policy
<https://www.epa.gov/sites/production/files/documents/fifra-erp1209.pdf>
- Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22:
<https://www.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>
- Information on Small Businesses and Enforcement
<https://www.epa.gov/compliance/small-business-resources-information-sheet>
- Use of Innovative Compliance Tools in Administrative Settlements
<https://www.epa.gov/sites/production/files/2015-01/documents/memo-nextgen-useinenfsettlements.pdf>

NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.